

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM S. MASKELUNAS,	:	
Plaintiff,	:	
v.	:	Case No. 3:06-cv-242-KRG-KAP
ANTON SKERL, M.D.,	:	
Defendants	:	

Report and Recommendation

Recommendation

Plaintiff has filed a motion to remand the complaint to state court. docket no. 2. I recommend the plaintiff's federal claims be dismissed with prejudice and that the motion to remand be granted.

Report


Plaintiff is incarcerated at S.C.I. Cresson, and is unsatisfied with the defendant's medical treatment decisions affecting plaintiff's asthma. He filed a complaint in the Court of Common Pleas of Cambria County alleging that defendant was violating the Eighth Amendment's prohibition of deliberate indifference toward an inmate's serious medical needs. See generally Estelle v. Gamble, 429 U.S. 97 (1976). The defendant properly removed the complaint to this court because it alleged a cause of action based on federal law. Plaintiff filed a motion to remand, docket no. 2, which in itself is inadequate and would have to be denied. Plaintiff then supplemented his motion with docket no. 3, asking the court to "dismiss all United States issues" and to remand the state law issues to state court. The supplement should be treated as a motion for voluntary dismissal of the

federal claims. Because plaintiff voluntarily withdraws all federal claims, the only reason for this court to retain jurisdiction would be pursuant to the provisions of 28 U.S.C. § 1367(c). Because this matter is at a very early stage and presents only issues of state law, supplemental jurisdiction should be declined.

The court has power to dismiss the federal claims on such "terms and conditions as the court deems proper," Fed.R.Civ.P. 41(a)(2): to avoid any attempt by the plaintiff to gain an improper tactical advantage by attempting to reopen the federal claims in state court, the court should dismiss the federal claims with prejudice and remand any state claims to the Court of Common Pleas.

Pursuant to 28 U.S.C. § 636(b)(1), the parties are given notice that they have ten days to serve and file written objections to this Report and Recommendation.

DATE: 7 December 2006


Keith A. Pesto,
United States Magistrate Judge

Notice by ECF to counsel of record and by U.S. Mail to:

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